Banks and Banking

12

PARTS 300 TO 499

Revised as of January 1, 1985

CONTAINING
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OF GENERAL APPLICABILITY
AND FUTURE EFFECT

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CHAPTER III—FEDERAL DEPOSIT INSURANCE CORPORATION

SUBCHAPTER A—PROCEDURE AND RULES OF PRACTICE

SUBCHAPTER B—REGULATIONS AND STATEMENTS OF GENERAL POLICY

SUBCHAPTER A—PROCEDURE AND RULES OF PRACTICE

PARTS 300–302—[RESERVED]

PART 303—APPLICATIONS, REQUESTS, SUBMITTALS, DELEGATIONS OF AUTHORITY, AND NOTICES OF ACQUISITION OF CONTROL

Sec

AUTHORITY Secs 2(5), 2(6), 2(7)(j), 2(8), 2(9 "Seventh" and "Tenth"), 2(18), 2(19), Pub L. No 797, 64 Stat 876, 881, 891, 893 as amended by Pub L No 86-463, 74 Stat 129, sec 2, Pub L No 87-827, 76 Stat 953, Pub L No 88-593, 78 Stat 940, Pub. L No 89-79, 79 Stat 244, sec 1, Pub L. No 89-356, 80 Stat 7, sec 12(c), Pub. L. No 89-485, 80 Stat 242, sec 3, Pub L. No 89-597, 80 Stat 824, title II, secs 201, 205, Pub L. No 89-695, 80 Stat 1055, sec 2(b), Pub L. No 90-505, 82 Stat 856, secs 6(c)(7), (12), (13), Pub L. No 95-369, 92 Stat 616-620, title III, secs 306, 309 and title VI, sec 602, Pub L No 95-630, 92 Stat 3677, 3683 (12 U S C 1815, 1816, 1817(j), 1818, 1819 "Seventh" and "Tenth", 1828, 1829), title I, sec 108, Pub L No 90-321, 82 Stat 150 as amended by title IV, sec 403, Pub L No 93-495, 88 Stat 1517 and title VI, sec 608, Pub L No 96-221, 94 Stat 171 (15 U S C 1607), unless otherwise noted

§ 303.1 Application by nonmember bank[1] for deposit insurance.

Application for deposit insurance by an existing or proposed State nonmember bank should be filed with the Regional Director of the Federal Deposit Insurance Corporation Region in which the bank or proposed bank is or will be located. Any such application by an existing bank must be accompanied by separate applications for the consent of the Corporation to the continued operation of each branch which it proposes to continue to operate Any such application by a proposed bank must be accompanied by a separate application for the consent of the Corporation to establish and operate each proposed branch. The appropriate forms of application and instructions for completing the same may be obtained upon request from the Regional Director of the Region in which the application originates. (See Part 304 of this title for list of forms and instructions.)

[32 FR 10556, July 19, 1967, as amended at 36 FR 1248, Jan. 27, 1971]

§ 303.2 Application by insured State nonmember bank to establish a branch[2] or move its main office or branch.

(a) Application by an insured State nonmember bank (except a District bank) to establish and operate a new branch (including a remote service facility) or to move its main office or branch should be filed with the regional director of the Federal Deposit Insurance Corporation region in which the bank is located The application shall be mailed or delivered to the regional director on the date on which the notice required in § 303.14(b)(1) is published or not more than 30 days subsequent to the first required publi-

[1] A nonmember bank is a bank which is not a member of the Federal Reserve System

[2] The term "branch" includes any "domestic branch" or "foreign branch" as the terms are defined in section 3(o) of the Federal Deposit Insurance Act, as amended (12 U S C 1813(o))

The Central American Institute for Industrial Research and Technology
Central American Monetary Stabilization Fund
East Carribbean Common Market
Latin American Free Trade Association
Organization for Central American States
Permanent Secretariat of the Central American General Treaty of Economic Integration
River Plate Basin Commission

AFRICA

African Development Bank
Banque Centrale des Etats de l'Afrique de l'Ouest.
Banque Centrale des Etats de l'Afrique Equatorial et du Cameroun
Conseil de l'Entente.
East African Community
Organisation Commune Africaine et Malagache
Organization of African Unity
Union des Etats de l'Afrique Centrale
Union Douaniere et Economique de l'Afrique Centrale.
Union Douaniere des Etats de l'Afrique de l'Ouest.

ASIA

Asia and Pacific Council
Association of Southeast Asian Nations
Bank of Taiwan
Korea Exchange Bank

MIDDLE EAST

Central Treaty Organization.
Regional Cooperation for Development

[35 FR 5006, Mar 24, 1970]

PART 330—CLARIFICATION AND DEFINITION OF DEPOSIT INSURANCE COVERAGE

REGULATIONS

INTERPRETATIONS

AUTHORITY 12 U.S C 1813, 1817, 1821, 1822, unless otherwise noted.

SOURCE: 32 FR 10408, July 14, 1967, unless otherwise noted

EDITORIAL NOTE. See "Notice of Order Enjoining the Implementation of Regulations" published at 49 FR 27294, July 3, 1984 For sections affected by the court order, see the List of CFR Sections Affected appearing in the Finding Aids section of this volume.

REGULATIONS

§ 330.0 Definition.

For the purpose of this Part 330 the term "insured bank" includes an insured branch of a foreign bank.

[44 FR 40059, July 9, 1979]

§ 330.1 General principles applicable in determining insurance of deposit accounts.

(a) *General.* This Part 330 provides for determination by the Corporation of the insured depositors of an insured bank and the amount of their insured deposit accounts. The rules for determining the insurance coverage of deposit accounts maintained by depositors in the same or different rights and capacities in the same insured bank are set forth in the following provisions of this part. Insofar as rules of local law enter into such determinations, the law of the jurisdiction in which the insured bank's principal office is located shall govern, except where the insured bank is an insured branch of a foreign bank, in which case the law of the jurisdiction where the insured branch is located shall govern.

(b) *Records.* (1) The deposit account records of the insured bank shall be conclusive as to the existence of any relationship pursuant to which the funds in the account are deposited and on which a claim for insurance coverage is founded Examples would be trustee, agent, custodian or executor

No claim for insurance based on such a relationship will be recognized in the absence of such disclosure.

(2) If the deposit account records of an insured bank disclose the existence of a relationship which may provide a basis for additional insurance, the details of the relationship and the interests of other parties in the account must be ascertainable either from the records of the bank or the records of the depositor maintained in good faith and in the regular course of business.

(3) The deposit account records of an insured bank in connection with a trust account shall disclose the name of both the settlor (grantor) and the trustee of the trust and shall contain an account signature card executed by the trustee.

(4) The interests of the co-owners of a joint deposit account shall be deemed equal, unless otherwise stated on the insured bank's records in the case of a tenancy in common.

(c) *Valuation of trust interests.* (1) Trust interests in the same trust deposited in the same account will be separately insured if the value of the trust interest is capable of determination, without evaluation of contingencies, except for those covered by the present worth tables and rules of calculation for their use set forth in § 20 2031-7 of the Federal Estate Tax Regulations (26 CFR 20 2031-7). Notwithstanding the foregoing, in connection with pension and other trusteed employee benefit funds (including those qualifing under section 401(d) or section 408(a) of the Internal Revenue Code of 1954), the trust interest of each participant shall be evaluated for insurance purposes as if the interest of such participant had fully vested as of the date the insured bank was closed on account of inability to meet the demands of its depositors.

(2) In connection with any trust in which certain trust interests are not capable of evaluation in accordance with the foregoing rule, payment by the Corporation to the trustee with respect to all such trust interests shall not exceed the basic insured amount of $100,000

(3) Each trust interest in any trust established by two or more settlors shall be deemed to be derived from each settlor pro rata to his contribution to the trust

(4) The term "trust interest" means the interest of a beneficiary in an irrevocable express trust, whether created by trust instrument or statute, but does not include any interest retained by the settlor. Notwithstanding the foregoing, any allocable interest created pursuant to an employee benefit plan, including a plan qualified under section 401(d) or section 408(a) of the Internal Revenue Code of 1954, as amended, shall be deemed to be a trust interest.

(5) With respect to trust funds held by an insured bank in a fiduciary capacity pursuant to section 7(i) of the Act, the term "trust interest" shall mean the same as the term "trust funds" as used in section 3(p) of the Act.

(d) *Insured branches of foreign banks.* (1) Except as provided in paragraph (d)(3) of this section deposits in an insured branch of a foreign bank which are payable in the United States shall be insured in accordance with the rules of this part.

(2) Deposits held by an insured depositor in any insured branch or insured branches of the same foreign bank shall be added together for deposit insurance purposes.

(3) Deposits to the credit of the foreign bank or any office, branch or agency of and wholly owned (except for a nominal number of directors' shares) subsidiary of the foreign bank shall not be insured

[32 FR 10408, July 14, 1967, as amended at 43 FR 10683, Mar 15, 1978, 43 FR 58081, Dec 12, 1978, 44 FR 40059, July 9, 1979; 45 FR 23645, Apr 8, 1980]

§ 330.2 Single ownership accounts.

Funds owned by an individual and deposited in the manner set forth below shall be added together and insured up to $100,000 in the aggregate.

(a) *Individual accounts.* Funds owned by an individual (or by the community between husband and wife of which the individual is a member) and deposited in one or more deposit accounts in his own name shall be insured up to $100,000 in the aggregate.

(b) *Accounts held by agents or nominees* Funds owned by a principal and deposited in one or more deposit accounts in the name or names of agents or nominees shall be added to any individual deposit accounts of the principal and insured up to $100,000 in the aggregate

(c) *Accounts held by guardians, custodians, or conservators* Funds held by a guardian, custodian, or conservator for the benefit of his ward or for the benefit of a minor under a Uniform Gifts to Minors Act and deposited in one or more deposit accounts in the name of the guardian, custodian, or conservator shall be added to any individual deposit accounts of the ward or minor and insured up to $100,000 in the aggregate.

[32 FR 10408, July 14, 1967, as amended at 45 FR 23645, Apr 8, 1980]

§ 330.3 Testamentary accounts.

(a) Funds owned by an individual and deposited in a revocable trust account, tentative or "Totten" trust account, "payable-on-death" account or similar account evidencing an intention that on his death the funds shall belong to his spouse, child or grandchild shall be insured up to $100,000 in the aggregate as to each such named beneficiary, separately from any other accounts of the owner.

(b) If the named beneficiary of such an account is other than the owner's spouse, child or grandchild, the funds in such account shall be added to any individual accounts of such owner and insured up to $100,000 in the aggregate

[32 FR 10408, July 14, 1967, as amended at 45 FR 23646, Apr 8, 1980]

§ 330.4 Accounts held by executors or administrators.

Funds of a decedent held in the name of the decedent or in the name of the executor or administrator of his estate and deposited in one or more deposit accounts shall be insured up to $100,000 in the aggregate, separately from the individual deposit accounts of the beneficiaries of the estate or of the executor or administrator

[32 FR 10408, July 14, 1967, as amended at 45 FR 23646, Apr 8, 1980]

§ 330 5 Accounts held by a corporation or partnership

(a) Deposit accounts of a corporation or partnership engaged in any independent activity shall be insured up to $100,000 in the aggregate. A deposit account of a corporation or partnership not engaged in an independent activity shall be deemed to be owned by the person or persons owning such corporation or comprising such partnership and, for deposit insurance purposes, the interest of each person in such a deposit account shall be added to any other deposit accounts individually owned by such person and insured up to $100,000 in the aggregate

(b) Notwithstanding any other provision of this Part 330, any trust or other business arrangement which has filed or is required to file a registration statement with the Securities and Exchange Commission pursuant to section 8 of the Investment Company Act of 1940 shall be deemed to be a corporation for purposes of determining deposit insurance coverage.

[32 FR 10408, July 14, 1967, as amended at 42 FR 10312, Feb. 22, 1977, 45 FR 23646, Apr 8, 1980]

§ 330.6 Accounts held by an unincorporated association.

Deposit accounts of an unincorporated association engaged in any independent activity shall be insured up to $100,000 in the aggregate. A deposit account of an unincorporated association not engaged in an independent activity shall be deemed to be owned by the persons comprising such association and for deposit insurance purposes, the interest of each owner in such a deposit account shall be added to any other deposit accounts individually owned by such person and insured up to $100,000 in the aggregate.

[32 FR 10408, July 14, 1967, as amended at 45 FR 23646, Apr 8, 1980]

§ 330.7 Independent activity.

The term "independent activity" means any activity other than one directed solely at increasing insurance coverage.

§ 330 8 Public unit accounts

(a) (1) Each official custodian of funds of the United States depositing the same in time or savings deposits in an insured bank shall be separately insured up to $100,000 as to such deposits Each such official custodian depositing such funds in a demand deposit shall be separately insured up to $100,000

(2) Each official custodian of funds of any State of the United States or any county, municipality, or political subdivision thereof depositing the same in time or savings deposits in an insured bank in the same State shall be separately insured up to $100,000.

(3) Each official custodian of funds of the District of Columbia lawfully depositing the same in time or savings deposits in an insured bank in the District of Columbia shall be separately insured up to $100,000

(4) Each official custodian of funds of the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, or Guam, or of any county, municipality, or political subdivision thereof lawfully depositing the same in time or savings deposits in an insured bank in Puerto Rico, the Virgin Islands, American Samoa, or Guam, respectively, shall be separately insured up to $100,000.

(5) Each official custodian referred to in paragraphs (a) (2), (3), and (4) of this section lawfully depositing such funds in demand deposits in an insured bank within the same State, District of Columbia, Commonwealth, possession or territory comprising the public unit or wherein the public unit is located, or in any form of deposit, whether time, savings or demand, in an insured bank outside such jurisdiction, shall be separately insured up to $100,000.

(6) For purposes of this paragraph (a), if the same person is an official custodian of more than one public unit, he shall be separately insured with respect to the public funds held by him for each such unit, but shall not be separately insured by virtue of holding different offices in such unit or, except as provided in paragraph (b) of this section, holding such funds for different purposes.

(b) *Public bond issues* Where an officer, agent or employee of a public unit has custody of certain funds which by law or under the bond indenture are required to be paid to the holders of bonds issued by the public unit, any deposit of such funds in an insured bank shall be deemed to be a deposit by a trustee of trust funds of which the bondholders are pro rata beneficiaries, and each such beneficial interest shall be separately insured up to $100,000

(c) *Political subdivision* The term "political subdivision" includes any subdivision of a public unit, as defined in section 3(m) of the Federal Deposit Insurance Act, or any principal department of such public unit, (1) The creation of which subdivision or department has been expressly authorized by State statute, (2) to which some functions of government have been delegated by State statute, and (3) to which funds have been allocated by statute or ordinance for its exclusive use and control. It also includes drainage, irrigation, navigation, improvement, levee, sanitary, school or power districts, and bridge or port authorities and other special districts created by State statute or compacts between the States. Excluded from the term are subordinate or nonautonomous divisions, agencies, or boards within principal departments.

[32 FR 10408, July 14, 1967, as amended at 34 FR 247, Jan 8, 1969, 45 FR 23646, Apr. 8, 1980]

§ 330.9 Joint accounts.

(a) *Separate insurance coverage.* Deposits owned jointly, whether as point tenants with right of survivorship, as tenants by the entireties, as tenants in common, or by husband and wife as community property, shall be insured separately from deposit accounts individually owned by the coowners

(b) *Qualifying joint accounts.* A joint deposit account shall be deemed to exist, for purposes of insurance of accounts, only if each coowner has personally executed a deposit account signature card and possesses withdrawal rights. The restrictions of this paragraph shall not apply to coowners of a time certificate of deposit or to

any deposit obligation evidenced by a negotiable instrument, but such a deposit must in fact be jointly owned

(c) *Failure to qualify* A deposit account owned jointly which does not qualify as a joint account for purposes of insurance of accounts shall be treated as owned by the named persons as individuals and the actual ownership interest of each such person in such account shall be added to any other accounts individually owned by such person and insured up to $100,000 in the aggregate

(d) *Same combination of individuals* All joint deposit accounts owned by the same combination of individuals shall first be added together and insured up to $100,000 in the aggregate.

(e) *Interest of each coowner.* The interest of each coowner in all joint deposit accounts owned by different combinations of individuals shall then be added together and insured up to $100,000 in the aggregate

[32 FR 10408, July 14, 1967, as amended at 33 FR 8505, June 8, 1968; 45 FR 23646, Apr 8, 1980]

§ 330.10 Trust accounts.

All trust interests for the same beneficiary deposited in deposit accounts established pursuant to valid trust agreements created by the same settlor (grantor) shall be added together and insured up to $100,000 in the aggregate, except time and savings deposits of the same beneficiary which qualify as pension or profit-sharing plans under section 401(d) or section 408(a) of the Internal Revenue Code of 1954, as amended. The vested and ascertainable interest (excluding any remainder interest) of each beneficial owner in a time or savings deposit established under either of the above sections, shall be added together and insured to an additional $100,000 maximum for each beneficial owner, notwithstanding the insurance provided in this section to other types of deposit accounts The insurance of such trust interests shall be separate from that afforded deposit accounts of the trustee of such trust funds or the settlor or beneficiary of such trust arrangement

[43 FR 58081, Dec 12, 1978, as amended at 45 FR 23646, Apr 8, 1980]

§ 330.11 Deposits evidenced by negotiable instruments.

If any insured deposit obligation of a bank be evidenced by a negotiable certificate of deposit, negotiable draft, negotiable cashier's or officer's check, negotiable certified check, or negotiable traveler's check or letter of credit, the owner of such deposit obligation will be recognized for all purposes of claim for insured deposits to the same extent as if his name and interest were disclosed on the records of the bank provided the instrument was in fact negotiated to such owner prior to the date of the closing of the bank. Affirmative proof of such negotiation must be offered in all cases to substantiate the claim.

§ 330.12 Deposit obligations for payment of items forwarded for collection by bank acting as agent.

Where a closed bank has become obligated for the payment of items forwarded for collection by a bank acting solely as agent, the owner of such items will be recognized for all purposes of claim for insured deposits to the same extent as if his name and interest were disclosed on the records of the bank when such claim for insured deposits, if otherwise payable, has been established by the execution and delivery of prescribed forms. Such bank forwarding such items for the owners thereof will be recognized as agent for such owners for the purpose of making an assignment of the rights of such owners against the closed insured bank to the Federal Deposit Insurance Corporation and for the purpose of receiving payment on behalf of such owners

§ 330.15 Amount of insured deposit.

(a) For those depository institutions where earnings on any savings deposit are calculated at a contract rate, the amount of an insured deposit is the principal amount which the insured deposit holder would have been entitled to withdraw as of the date of default of the institution, plus earnings on the deposit accrued to such date at the contract rate, without regard to whether such deposit is subject to any pledge

(b) For those depository institutions where earnings on any deposit are calculated at an anticipated or announced rate, the amount of an insured deposit is the principal amount which the insured deposit holder would have been entitled to withdraw as of the date of default of the institution, plus the earnings on the deposit accrued to such date at the anticipated or announced rate, without regard to whether such deposit is subject to any pledge.[1] In the absence of any such announced or stated anticipated rate, such rate for savings deposits shall be the rate paid in the immediately preceding payment period.

(c) With respect to certificates of deposit sold at a discount from their face value, and for which there is no stated rate of interest, the value of the certificate shall be its original purchase price plus the amount of accrued earnings calculated by compounding interest annually at the rate necessary to increase the original purchase price to the maturity value over the life of the certificate.

(d) For all insured banks, where there is a time deposit with a fixed or minimum term or a qualifying or notice period that has not expired as of such date, interest thereon to the date of closing shall be computed according to the terms of the deposit contract as if the deposit could have been withdrawn on such date without any penalty or reduction in the rate of earnings

[48 FR 52031, Nov 16, 1983]

[1] Regardless of the method of the calculation of earnings on a deposit and whether or not the deposit is subject to any pledge, said method and/or presence or absence of a pledge shall not affect the FDIC's right to deduct offsets in determining the amount of insured deposits, as set forth in section 3(m)(1) of the Federal Deposit Insurance Act

INTERPRETATIONS

§ 330.101 Recognition of deposit ownership in custodial accounts.

(a) The opinion of the Board of Directors has been requested as to whether a fractional or percentage computation of the interests of owners of commingled funds on deposit in custodial accounts in banks insured by the Federal Deposit Insurance Corporation meets the requirements of § 330.1.

(b) Section 330.1 provides that if the name and interest of an owner of any portion of a specifically designated custodial deposit is disclosed on the records of the person in whose name the deposit is maintained and such records are maintained in good faith and in the regular course of business, such owner will be recognized for all purposes of claim for insured deposits to the same extent as if his name and interest were disclosed on the records of the bank.

(c) The Board of Directors has concluded that, if the records of the depositor, maintained in good faith and in the regular course of business, reflect, at all times, the name and ascertainable interest of each owner in a specifically designated custodial deposit, such interest may be determined on a fractional or percentage basis. This may be accomplished in any manner which indicates that where the funds of an owner are commingled with other funds held in custody and a portion thereof is placed on deposit in one or more insured banks, his interest in a custodial deposit in any one insured bank would represent at any given time the same fractional share as his share of the total commingled funds.

PART 331—INSURANCE OF TRUST FUNDS

§ 331.1 Claim by fiduciary bank for insured deposits of trust estates.

In the event of the closing of an insured bank for inability to meet the demands of its depositors, the claim for insured deposits made by a fiduciary bank or trust company which, in the exercise of its trust powers, had

code of federal regulations

Banks and Banking

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PART 500 TO END

Revised as of January 1, 1985

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CHAPTER V—FEDERAL HOME LOAN BANK BOARD

SUBCHAPTER A—GENERAL

SUBCHAPTER B—FEDERAL HOME LOAN BANK SYSTEM

the Clayton Act (15 U S C 19) is not prohibited from continuing to serve in such interlocking positions until November 10, 1988 Any management official who has been required to terminate or who has terminated service in one or more such interlocking positions as a result of a merger, acquisition, consolidation or establishment of offices that was formerly defined as a change in circumstances in 12 CFR 563f 6(a) (1981) is not prohibited from continuing or resuming such service until November 10, 1988

(Pub. L 95-630 (12 U S C 3201 *et seq*), as amended by International Banking Facility Deposit Insurance Act, Pub L 97-110, sec 302 (Dec 26, 1981)), Reorg Plan No 3 of 1947, 3 CFR, 1943-1948 Comp , p 1071)

[48 FR 5535, Feb 7, 1983]

§ 563f 6 Changes in circumstances

(a) *Non-grandfathered interlocks.* If a person's service as a management official is not grandfathered under § 563f 5 of this part, that person's service must be terminated if a change in circumstances causes such service to become prohibited. Such a change may include, but is not limited to, an increase in asset size of an organization due to natural growth, a change in relevant metropolitan statistical area or community boundaries, or the designation of a new relevant metropolitan statistical area; an acquisition, merger, or consolidation, the establishment of an office, or a disaffiliation

(b) *Grace period* If a person's non-grandfathered service as a management official becomes prohibited under paragraph (a) of this section, the person may continue to serve as a management official of all organizations involved in the prohibited interlocking relationship until 15 months after the date on which the change in circumstances that caused the interlock to become prohibited occurred, unless the appropriate Federal supervisory agency or agencies take affirmative action in an individual case to established a shorter period

(Secs 206, 207, 209, 92 Stat 3674, 3675 (12 U S C 3205, 3206, 3207), as amended by International Banking Facility Deposit Insurance Act, Pub L 97-110, 302 (Dec 26, 1981)), Reorg Plan No 3 of 1947, 3 CFR, 1943-48 Comp , p 1071)

[48 FR 50301, Nov 1, 1983, as amended at 49 FR 28044, July 10, 1984]

§ 563f 7 Delegation of authority to grant exemptions and extensions of time

The Office of Examinations and Supervision, with the concurrence of the Office of General Counsel, may grant exemptions under § 563f 4 and extensions of time under § 563f 6, except that the Principal Supervisory Agent may grant such extensions of time under § 563f 6 when requested in connection with applications for which the Principal Supervisory Agent has delegated approval authority. Exemptions under any paragraph of § 563f.4 shall be granted under this delegated authority if all relevant conditions specified in that paragraph, if any, are met. Extensions under § 563f.6 shall be granted unless the Office of Examinations and Supervision with the concurrence of the Office of General Counsel, or the Principal Supervisory Agent, as appropriate, determines that the extension would be so contrary to the purpose of the Interlocks Act, to foster competition among depository institutions, as to outweigh the disruption caused by the earlier departure of management officials in interlocking relationships Any denial of a request for an exemption or extension of time will be processed to the Board Applications made pursuant to this section should be submitted in triplicate to the Principal Supervisory Agent of the district in which the applicant is located.

(Secs 402, 403, 407, 48 Stat 1256, 1257, 1260, as amended (12 U S.C 1725, 1726, 1730); sec 5A, 47 Stat 727, as amended by sec 1, 64 Stat 256, as amended, sec 17, 47 Stat 736, as amended (12 U S C 1425a, 1437), sec 5, 48 Stat 132, as amended (12 U S C 1464), Reorg Plan No 3 of 1947, 12 FR 4981, 3 CFR, 1943-48 Comp , p 1071)

[45 FR 84103, Dec 22, 1980, as amended at 46 FR 54724, Nov 4, 1981]

§ 563f.8 Enforcement

The Federal Home Loan Bank Board administers and enforces the Interlocks Act with respect to FSLIC-insured institutions, savings and loan holding companies, and their affiliates, and may refer the case of a prohibited interlocking relationship involving any such organization, regardless of the nature of any other organization involved in the prohibited relationship, to the Attorney General of the United States to enforce compliance with the Interlocks Act and this part If an affiliate of an FSLIC-insured institution or savings and loan holding company is primarily subject to the regulation of another Federal supervisory agency, then the Board does not administer and enforce the Interlocks Act with respect to that affiliate

(Sec 5, 48 Stat 132 (12 U S C 1464), as amended by sec 401, 94 Stat 160, secs 402, 403, 407, 48 Stat 1256, 1257, 1260, as amended (12 U S C 1725, 1726, 1730), Reorg Plan No 3 of 1947, 12 FR 4981, 3 CFR, 1943-48 Comp , p 1071)

[45 FR 24399, Apr 9, 1980 Redesignated at 45 FR 84013, Dec 22, 1980]

PART 564—SETTLEMENT OF INSURANCE

Sec

AUTHORITY Sec 308, Pub L 96-221, secs 401, 402, 403, 405, 48 Stat 1255, 1256, 1257, 1259, as amended (12 U S C 1724, 1725, 1726, 1728), Reorg Plan No 3 of 1947, 12 FR 4981, 3 CFR, 1943-48 Comp , p 1071, unless otherwise noted

EDITORIAL NOTE See "Notice of Order Enjoining the Implementation of Regulations" published at 49 FR 27294, July 3, 1984 For sections affected by the court order, see the List of CFR Sections Affected appearing in the Finding Aids section of this volume

§ 564 1 Settlement of insurance upon default

(a) *General.* In the event of a default by an insured institution, the Corporation will promptly determine, from the account contracts and the books and records of the institution, or otherwise, the insured members thereof and the amount of the insured account or accounts of each such member The Corporation will give to each insured member shown to be such on the books of the insured institution written notice of the time and place of payment of insurance by mail at the last known address as shown by the books of the insured institution If an insured institution has outstanding at the time of default any account or accounts issued in negotiable instrument form, the Corporation shall, promptly after default, publish (in a newspaper printed in the English language and of general circulation in the city, county, or locality in which the principal office of such insured institution is located) a notice to all account holders of such insured institution of the time and place of payment of insurance.

(b) *Amount of insured account.* The amount of an insured account is the amount which the insured member would have been entitled to withdraw as of the date of default, plus interest on any savings account accrued to such date or dividends prorated to such date at the announced or anticipated rate without regard to whether such account is subject to any pledge *Provided,* that the amount of an insured account shall not include any amount the accural or payment of which is any way contingent or, in the case of a share account, which has not been announced as of the date of default under the terms of the account In the case of a savings account with a fixed or minimum term or a qualifying or notice period that has not expired as of such date, dividends or interest thereon shall be computed as if the account could have been withdrawn on such date without any penalty or reduction in the rate of earnings.

(c) *Multiple accounts* In the event an insured member holds more than one insured account in the same capacity, and the aggregate amount of

such accounts (including checking accounts held in such capacity) exceeds the amount of insurance afforded thereon, the insurance coverage will be prorated among the member's interest in all accounts held in the same capacity on the basis of their withdrawable value as of the date of default In the case of individual accounts the insurance proceeds shall be paid to the holder of the account, whether or not the beneficial owner. In the case of accounts which are owned jointly the insurance proceeds shall be paid to the owners jointly. In the case of trust estates the insurance proceeds shall be paid to the indicated trustee unless otherwise provided for in the trust instrument or under State law In the case of corporations, partnerships and unincorporated associations, whether or not engaged in an independent activity, the insurance proceeds shall be paid to the indicated holder of the account Where insurance payment is in the form of a transferred account, the same rules shall be applied

(d) *Processing of insurance claims—*(1) *Delegations of authority* The Director or Acting Director of the Insurance Division of the Office of the Federal Savings and Loan Insurance Corporation ("Director of the Insurance Division") or his or her designee is authorized to give written notice to each insured member of the time and place of settlement of insurance, as required by paragraph (a) of this section, and to make determinations with respect to insurance claims pursuant to the principles set forth in this part The Director or the Acting Director of the Office of the Federal Savings and Loan Insurance Corporation ("Director") is authorized to reconsider determinations by the Director of the Insurance Division and to make determinations on reconsideration with respect to insurance claims pursuant to the principles set forth in this part Pursuant to the authority granted the Board by 12 U S C 1437(a), such determinations, to the extent specified in this section, shall constitute the final action of the Corporation

(2) *Determination by the Director of the Insurance Division* In the event the Director of the Insurance Division shall determine that all or a portion of an accountholder's account is uninsured, the Director of the Insurance Division shall so notify the accountholder in writing, stating the reason(s) for such determination, and shall provide the accountholder with a certificate of claim in liquidation in the amount of the uninsured account from the Corporation, in its capacity as receiver for the insured institution in default, to enable the accountholder to share in the proceeds of the liquidation of the institution, if any, up to the amount of the uninsured account Unless the accountholder requests reconsideration of the determination in the manner provided in paragraph (d)(3) of this section, such determination shall be final.

(3) *Request for reconsideration* (i) Within 60 days after receipt of a determination by the Director of the Insurance Division that all or a portion of an accountholder's account is uninsured, such accountholder may obtain reconsideration of the initial determination by filing with the Director a written request for reconsideration *Provided,* that with respect to determinations made in connection with payments of insurance by the Corporation on accounts in insured institutions in default before September 19, 1984, but after September 19, 1981, the 60-day period for requesting reconsideration by the Director shall commence on September 19, 1984

(ii) Within 30 days of receipt of a request for reconsideration, the Director shall notify the accountholder, in writing, whether the request is considered to be substantial

(iii) A request will be considered substantial only in those instances where the request is in writing, timely filed, sets forth an issue of law or fact which was not addressed or, in the opinion of the Director, was not adequately addressed in the determination by the Director of the Insurance Division, and which is consistent with one of the regulatory bases set forth in this Part for entitlement to insurance, and includes all of the following

(*a*) A statement of the facts on which the claim for insurance is based

(*b*) The specific reason(s) for the determination to which the accountholder objects, and the basis for the objection(s), including citations to applicable statutes and regulations, and

(*c*) Copies of the records of the accountholder maintained in good faith and in the regular course of business which support the accountholder's claim to insurance and which have not previously been submitted to the Corporation.

(iv) The Director's determination whether a request for reconsideration is "substantial" shall be final. If the Director determines that a request for reconsideration is not substantial, then the determination by the Director of the Insurance Division shall constitute the final determination with respect to the extent of insurance effective as of the date of the Director's determination regarding the substantiality of the request for reconsideration.

(4) *Reconsideration by the Director* (i) Upon determining that a request for reconsideration is substantial, the Director shall so notify the accountholder in writing. Within 90 days of the date of such notice, the Director shall determine the extent of the accountholder's insurance pursuant to the principles set forth in this Part, or if the Director determines that a request for reconsideration presents a significant policy issue, the Director shall refer that issue to the Board for decision, and shall notify the accountholder that an issue has been referred to the Board, The Board's decision on the issue shall be applied by the Director in determining the extent of insurance The determination by the Director on reconsideration shall be final, and shall be provided to the accountholder in writing, stating the reason(s) for the determination If the Director determines that the accountholder is entitled to the amount of insurance claimed or a portion thereof, upon payment of insurance the accountholder shall promptly surrender to the Corporation the certificate of claim in liquidation provided to the accountholder in connection with the initial determination

(ii) The Corporation shall, from time to time, make available a digest of its final determinations with respect to insurance claims

(Sec 4, 80 Stat 824, as amended (12 U S C 1425b); sec 5, 48 Stat 132, as amended (12 U S C 1464), secs 402, 403, 48 Stat 1256, 1257, as amended (12 U S C 1725, 1726), Reorg Plan No 3 of 1947, 12 FR 4981, 3 CFR, 1943-48 Comp , p 1071)

[40 FR 46095, Oct 6, 1975, as amended at 47 FR 13784, Apr 1, 1982, 49 FR 36633, Sept 19, 1984, 49 FR 50027, Dec 26, 1984]

§ 564 2 General principles applicable in determining insurance of accounts

(a) *General.* Section 564 1 of this part provides for determination by the Corporation of the insured members of an insured institution and the amount of their insured accounts The rules for determining the insurance coverage of accounts in the same insured institution are set forth in the following provisions of this part. Insofar as rules of local law enter into such determinations, the law of the jurisdiction in which the insured institution's principal office is located shall govern.

(b) *Records.* (1) The account records of the insured institution shall be conclusive as to the existence of any relationship pursuant to which the funds in the account are invested and on which a claim for insurance coverage is founded. Examples would be trustee, agent, custodian or executor No claim for insurance based on such a relationship will be recognized in the absence of its disclosure on such records

(2) If the account records of an insured institution disclose the existence of a relationship which may provide a basis for additional insurance, the details of the relationship and the interests of other parties in the account must be ascertainable either from the records of the association or the records of the account holder maintained in good faith and in the regular course of business

(3) The account records of an insured institution in connection with a trust account shall disclose the name of both the settlor (grantor) and the trustee of the trust and shall contain an account signature card executed by the trustee

(4) The interests of the co-owners of a joint account shall be deemed equal, unless otherwise stated on the insured

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institution's records in the case of a tenancy in common

(5) The foregoing provisions of this paragraph (b) shall not be applicable with respect to any account evidenced by a certificate of deposit which was issued in negotiable instrument form Affirmative proof must be offered in all cases to substantiate a claim by the holder of such an account as to the existence of any relationship upon which a claim for insurance coverage is founded

(c) *Valuation of trust interests* (1) Trust estates (as defined in § 561.4 of this subchapter) in the same trust invested in the same account will be separately insured if the value of the trust estate is capable of determination, as of the date of default, without evaluation of contingencies except for those covered by the present-worth tables and rules of calculation for their use set forth in § 20.2031-10 of the Federal Estate Tax Regulations (26 CFR 20 2031-10) *Provided,* that (i) in connection with pension and other trusteed employee benefit funds (including those qualifying under section 401(d) or section 408(a) of the Internal Revenue Code of 1954), the trust estate of each participant shall be evaluated as if the trust were irrevocable and the interest of the participant had fully vested as of the date of default of the insured institution, and (ii) in connection with deferred compensation plans, the trust estate of each participant shall be evaluated as if the participant were the beneficiary of an irrevocable trust and the interest of the participant had fully vested as of the date of default of the insured institution

(2) In connection with any trust in which certain trust estates are not capable of evaluation in accordance with the foregoing rule, payment by the Corporation to the trustee with respect to all such estates shall not exceed the basic insured amount of $100,000

(3) Each trust estate in any trust established by two or more settlors shall be deemed to be derived from each settlor pro rata to his contribution to the trust

(Sec 4, 80 Stat 824, as amended (12 U S C 1425b), sec 5, 48 Stat 132, as amended (12 U S C 1464), secs 402, 403, 48 Stat 1256, 1257, as amended (12 U S C 1725, 1726), Reorg Plan No 3 of 1947, 12 FR 4981, 3 CFR, 1943-48 Comp , p 1071)

[32 FR 10415, July 14, 1967, as amended at 35 FR 179, Jan 6, 1970, 39 FR 41243, Nov 26, 1974, 45 FR 26024, Apr 17, 1980, 47 FR 13784, Apr. 1, 1982, 47 FR 20750, May 14, 1982]

§ 564.3 Single ownership accounts.

Funds owned by an individual and invested in the manner set forth below shall be added together and insured up to $100,000 in the aggregate

(a) *Individual accounts* Funds owned by an individual (or by the husband-wife community of which the individual is a member) and invested in one or more accounts in his own name shall be insured up to $100,000 in the aggregate

(b) *Accounts held by agents or nominees.* (1) Funds owned by a principal and invested in one or more accounts in the name or names of agents or nominees shall be added to any individual accounts of the principal and insured up to $100,000 in the aggregate.

(2) A loan servicer who receives loan payments and places or maintains such payments in an insured institution prior to remittance to the lender or other parties entitled to the funds shall, for insurance-of-accounts purposes, be considered an agent of each borrower.

(c) *Accounts held by guardians, custodians or conservators.* Funds held by a guardian, custodian or conservator for the benefit of his ward or for the benefit of a minor under a Uniform Gifts to Minors Act and invested in one or more accounts in the name of the guardian, custodian or conservator shall be added to any individual accounts of the ward or minor and insured up to $100,000 in the aggregate

[32 FR 10415, July 14, 1967, as amended at 35 FR 179, Jan 6, 1970, 39 FR 41243, Nov 26, 1974, 45 FR 26024, Apr 17, 1980, 47 FR 56318, Dec 16, 1982]

§ 564 4 Testamentary accounts

(a) Funds owned by an individual and invested in a revocable trust account, tentative or "Totten" trust account, payable-on-death account or similar account evidencing an intention that on his death the funds shall belong to his spouse, child or grandchild, shall be insured up to $100,000 in the aggregate as to each such named beneficiary, separately from any other accounts of the owner

(b) If the named beneficiary of such an account is other than the owner's spouse, child or grandchild, the funds in such account shall be added to any individual accounts of such owner and insured up to $100,000 in the aggregate

[32 FR 10415, July 14, 1967, as amended at 35 FR 179, Jan 6, 1970, 39 FR 41243, Nov 26, 1974, 45 FR 26024, Apr 17, 1980]

§ 564.5 Accounts held by executors or administrators.

Funds of a decedent held in the name of the decedent or in the name of the executor or administrator of his estate and invested in one or more accounts shall be insured up to $100,000 in the aggregate, separately from the individual accounts of the beneficiaries of the estate or of the executor or administrator.

[32 FR 10415, July 14, 1967, as amended at 35 FR 179, Jan 6, 1970, 39 FR 41243, Nov 26, 1974; 45 FR 26024, Apr 17, 1980]

§ 564.6 Accounts held by a corporation or partnership.

Accounts of a corporation or partnership engaged in any independent activity shall be insured up to $100,000 in the aggregate. An account of a corporation or partnership not engaged in an independent activity shall be deemed to be owned by the person or persons owning such corporation or comprising such partnership and, for insurance purposes, the interest of each person in such account shall be added to any other accounts individually owned by such person and insured up to $100,000 in the aggregate

[32 FR 10415, July 14, 1967, as amended at 35 FR 179, Jan 6, 1970; 39 FR 41243, Nov 26, 1974, 45 FR 26024, Apr 17, 1980]

§ 564.7 Accounts held by an unincorporated association

Accounts of an unincorporated association engaged in any independent activity shall be insured up to $100,000 in the aggregate An account of an unincorporated association not engaged in an independent activity shall be deemed to be owned by the persons comprising such association and, for insurance purposes, the interest of each owner in such account shall be added to any other accounts individually owned by such person and insured up to $100,000 in the aggregate

[32 FR 10415, July 14, 1967, as amended at 35 FR 179, Jan 6, 1970, 39 FR 41243, Nov 26, 1974, 45 FR 26024, Apr 17, 1980]

§ 564.8 Public unit accounts.

(a)(1) Each official custodian of funds of the United States, any State of the United States or any county, municipality, or political subdivision thereof, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, any other territory of the United States or any county, municipality or political subdivision thereof who lawfully invests such funds in an insured institution is separately insured in an amount up to $100,000

(2) For purposes of this paragraph (a) if the same person is an official custodian of more than one public unit, he shall be separately insured with respect to the public funds held by him for each such unit

(b) *Public bond issues.* Where an officer, agent or employee of a public unit has custody of certain funds which by law or under the bond indenture are required to be paid to the holders of bonds issued by the public unit, any investment of such funds in an insured institution shall be deemed to be an investment by a trustee of trust funds of which the bondholders are pro rata beneficiaries, and each such beneficial interest shall be separately insured up to $100,000

(c) This section does not apply to tax and loan accounts, United States Treasury General Accounts, and United States Treasury Time Deposit-Open Accounts.

(Pub L 95-147 of Oct 28, 1977, sec 4, 82 Stat 856, sec 4, 80 Stat 824, and sec 17, 47 Stat 736, as amended (12 U S C 1425a, 1425b, and 1437), sec 5, 48 Stat 132, as amended (12 U S C 1464), secs 401-405, 407, 48 Stat 1255-1260, as amended (12 U S C

1724-1728 1730), Reorg Plan No 3 of 1947, 12 FR 4981, 3 CFR, 1943-1948 Comp , p 1071)

[32 FR 10415, July 14, 1967, as amended at 35 FR 179, Jan 6, 1970, 39 FR 41243, Nov 26, 1974, 45 FR 26024, Apr 17, 1980, 47 FR 36612, Aug 23, 1982]

§ 564 9 Joint accounts

(a) *Separate insurance coverage* Accounts owned jointly, whether as joint tenants with right of survivorship, as tenants by the entireties, as tenants in common, or by husband and wife as community property, shall be insured separately from accounts individually owned by the co-owners

(b) *Qualifying joint accounts* A joint account shall be deemed to exist for purpose of insurance of accounts, only if each co-owner has personally executed an account signature card and possesses withdrawal rights The foregoing provisions of this paragraph (b) shall not be applicable with respect to any account evidenced by a certificate of deposit which was issued pursuant to § 545 1-5 of this chapter or evidenced by a certificate which was issued pursuant the approval granted by § 563 3-3 of this chapter

(c) *Failure to qualify* An account owned jointly which does not qualify as a joint account for purposes of insurance of accounts shall be treated as owned by the named persons as individuals and the actual ownership interest of each such person in such account shall be added to any other accounts individually owned by such person and insured up to $100,000 in the aggregate.

(d) *Same combination of individuals* All joint accounts owned by the same combination of individuals shall first be added together and insured up to $100,000 in the aggregate

(e) *Interest of each co-owner.* The interests of each co-owner in all joint accounts owned by different combinations of individuals shall then be added together and insured up to $100,000 in the aggregate

[32 FR 10415, July 14, 1967, as amended at 35 FR 179, Jan 6, 1970, 39 FR 29340, Aug 15, 1974, 39 FR 41243, Nov 26, 1974, 45 FR 26024, Apr 17, 1980]

§ 564 10 Trust accounts and IRA and Keogh accounts.

All trust estates for the same beneficiary invested in accounts established pursuant to valid trust arrangements created by the same settlor (grantor) shall be added together and insured up to $100,000 in the aggregate, separately from other accounts of the trustee of such trust funds or of the settlor or beneficiary of such trust arrangements, except that (a) all vested and ascertainable interests of the same beneficiary which qualify under section 401(d) of the Internal Revenue Code of 1954 shall be added together and insured up to $100,000 separately from any trust interests of the beneficiary, (b) all vested and ascertainable interests of the same beneficiary which qualify under section 408(a) of the Internal Revenue Code of 1954 shall be added together and separately insured up to an additional $100,000, and (c) all trust estates as defined in § 561.4(b) of this subchapter shall be added together and separately insured up to an additional $100,000.

[47 FR 20750, May 15, 1982]

§ 564.11 FDIC-insured Federal associations.

Federal associations the deposits of which are insured by the Federal Deposit Insurance Corporation are not deemed to be insured institutions for the purposes of this part.

[47 FR 56995, Dec 22, 1982]

Appendix—Examples of Insurance Coverage Afforded Accounts in Institutions Insured by the Federal Savings and Loan Insurance Corporation

The following examples illustrate insurance coverage on accounts maintained in the same insured institution They are intended to cover various types of ownership interests and combinations of accounts which may occur in connection with funds invested in insured institutions These examples interpret the rules for insurance of accounts contained in 12 CFR Part 564

The examples, as well as the rules which they interpret, are predicated upon the assumption that invested funds are actually owned in the manner indicated on the institution's records If available evidence shows that ownership is different from that on the institution's records, the Federal Savings and Loan Insurance Corporation may pay claims for insured accounts on the basis of actual rather than ostensible ownership

A Single Ownership Accounts

All funds owned by an individual (or by the husband-wife community of which the individual is a member) and invested by him in one or more individual accounts are added together and insured to the $100,000 maximum This is true whether the accounts are maintained in the name of the individual owning the funds, in the name of his agent or nominee, or in the name of a guardian, conservator or custodian holding the funds for his benefit

Example 1

Question A and B, husband and wife, each maintain an individual account containing $100,000 In addition, they hold a joint account containing $100,000 What is the insurance coverage?

Answer Each account is separately insured to $100,000, for a total coverage of $300,000 The coverage would be the same whether the individual accounts contain funds owned as community property or as individual property of the spouses (§ 564 3(a) and § 564 9(a))

Example 2

Question H and W, husband and wife, reside in a community property state H maintains a $100,000 account consisting of his separately owned funds and invests $100,000 of community property funds in another account, both of which are in his name alone What is the insurance coverage?

Answer The two accounts are added together and insured to a total of $100,000 $100,000 is uninsured (§ 564 3(a))

Example 3

Question A has $92,500 invested in an individual account, and his agent, B, invests $25,000 of A's funds in a properly designated agency account B also holds a $100,000 individual account What is the insurance coverage?

Answer A's individual account and the agency account are added together and insured to the $100,000 maximum, leaving $17,500 uninsured The investment of funds through an agent does not result in additional insurance coverage for the principal (§ 564 3(b)) B's individual account is insured separately from the agency account (§ 564 3(a)) However, if the account records of the institution do not show the agency relationship under which the funds in the $25,000 account are held, the $25,000 in B's name could, at the option of the Insurance Corporation, be added to his individual account and insured to $100,000 in the aggregate, leaving $25,000 uninsured (§ 564 2(b)(1))

Example 4

Question A holds a $100,000 individual account B holds two accounts in his own name, the first containing $25,000 and the second containing $92,500 In processing the claims for payment of insurance on these accounts, the Insurance Corporation discovers that the funds in the $25,000 account actually belong to A and that B had invested these funds as agent for A, his undisclosed principal What is the insurance coverage?

Answer Since the available evidence shows that A is the actual owner of the funds in the $25,000 account, the Insurance Corporation may, at its option, add these funds to the $100,000 individual account held by A (rather than to B's $92,500 account) and insure the total of $125,000 to the $100,000 maximum, leaving $25,000 uninsured In that event B's $92,500 individual account would be separately insured (§ 564 23(a) and (b))

Example 5

Question. C, a minor, maintains an individual account of $750 in connection with a school savings program C's grandfather makes a gift to him of $100,000, which is invested in another account by C's father, designated on the institution's records as custodian under a Uniform Gifts to Minors Act C's father also maintains an individual account of $100,000 What is the insurance coverage?

Answer C's individual account and the custodianship account held for him by his father are added together and would be insured to the $100,000 maximum (§ 564 23(c)) The individual account held by C's father is separately insured (§ 564 2 3(a))

Example 6

Question. G, a court appointed guardian, invests in a properly designated account $100,000 of funds in his custody which belong to W, his ward W and G each maintain $25,000 individual accounts What is the insurance coverage?

Answer W's individual account and the guardianship account in G's name are added together and insured to $100,000 in the aggregate The fact that a guardian has been judicially appointed does not alter the fact that the guardianship funds legally belong to W, the ward, and are insured as W's individually owned funds (§ 564 23(c)) G's individual account is separately insured (§ 564 23(a))

proxy or other communication to security holders under circumstances reasonably calculated to result in the procurement, withholding, or revocation of a proxy The terms do not apply, however, to the furnishing of a form of proxy to a security holder upon the request of such security holder or to the performance by any person of ministerial acts on behalf of a person soliciting a proxy

§ 569 2 Form of proxies.

Every form of proxy solicited on or after December 1, 1971, by any person shall conform to the following requirements

(a) The proxy shall be revocable at will by the person giving it The power to revoke may not be conditioned on any event or occurrence or be otherwise limited, except that, in the case of a proxy relating to capital stock if such proxy is coupled with an interest, states such fact on its face, and is valid under the laws of the State in which it is to be exercised, such proxy may be made irrevocable to the extent permitted by such State law.

(b) The proxy may not be part of any other document or instrument (such as an account card).

(c) The proxy shall be clearly labeled "Revocable Proxy" in boldface type (at least as large as 18 point).

§ 569 3 Holders of proxies.

(a) No proxy of an insured mutual association with a term greater than eleven months or solicited at the expense of the association may designate as holder anyone other than the board of directors [trustees] as a whole, or a committee appointed by a majority of such board.

(b) No proxy may designate as a holder any corporation or partnership (including any person acting on behalf of any corporation or partnership), or any person other than a living, natural person However, a proxy may designate

(1) The holder of a specified title or office, if a natural person, or

(2) A committee composed solely of natural persons, including a committee composed of the board of directors or committee appointed by a majority of such board of an insured association.

(c)(1) With respect to any proxy outstanding on October 15, 1971, no designation of a living, natural person shall be ineffective under this section solely for the reason that a corporation or partnership (including any person acting on behalf of any corporation or partnership), or any person other than a living, natural person, is named as an alternate or substitute holder.

(2) Any proxy of an insured mutual association outstanding on [effective date of final regulation] and not in compliance with paragraph (a) of this section shall be valid until December 31, 1985

[36 FR 19973, Oct 14, 1971, as amended at 48 FR 44194, Sept 28, 1983]

§ 569 4 Proxy soliciting material.

No solicitation of a proxy shall be made by means of any statement, form of proxy, notice of meeting, or other communication, written or oral, which:

(a) Solicits any undated or postdated proxy,

(b) Solicits any proxy that provides that it shall be deemed to be dated as of any date subsequent to the date on which it is signed by the security holder, or

(c) (1) Contains any statement that is false or misleading with respect to any material fact, or

(2) Omits to state any material fact (i) Necessary in order to make the statements therein not false or misleading or (ii) necessary to correct any statement in any earlier communication with respect to the solicitation of a proxy for the same meeting or subject matter that has subsequently become false or misleading.

PART 569a—RECEIVERS FOR INSURED INSTITUTIONS OTHER THAN FEDERAL ASSOCIATIONS

AUTHORITY Secs 402, 406, 48 Stat 1256, 1259, as amended, 12 U S C 1725, 1729 Reorg Plan No 3 of 1947, 3 CFR, 1943-1948 Comp , p 1071

SOURCE 33 FR 14366, Sept 24, 1968, unless otherwise noted

§ 569a.1 Grounds for appointment of Receiver.

In the event the Board determines

(a) That· (1) A conservator, receiver or other legal custodian (whether or not the Corporation) has been or is hereafter appointed for an insured institution which is not a Federal savings and loan association or Federal savings bank other than by the Board (whether or not such institution is in default) and that the appointment of such conservator, receiver, or custodian, or any combination thereof, has been outstanding for a period of at least 15 consecutive days, or (2) an insured institution (other than a Federal savings and loan association or Federal savings bank) has been closed by or under the laws of any State, the Commonwealth of Puerto Rico, the territories and possessions of the United States, or any place subject to the jurisdiction of the United States;

(b) That one or more of the grounds specified in paragraph (6)(A) of section 5(d) of the Home Owners' Loan Act of 1933, existed with respect to such institution at the time a conservator, receiver, or other legal custodian was appointed, or at the time such institution was closed, or exists thereafter during the appointment of the conservator, receiver, or other legal custodian or while the institution is closed, and

(c) That one or more of the holders of checking or savings accounts in such institution is unable to obtain a withdrawal of his account, in whole or in part,

the Board shall have exclusive power and jurisdiction to appoint the Corporation as sole Receiver for such institution. As used in this part, the term "default" means an adjudication or other official determination of a court of competent jurisdiction or other public authority pursuant to which a conservator, receiver, or other legal custodian is appointed for an insured institution for the purpose of liquidation

(Secs 2, 5, 48 Stat 128, 132, as amended (12 U S C 1462, 1464), secs 401, 402, 403, 405, 406, 407, 48 Stat 1255, 1256, 1257, 1259, 1260, as amended (12 U.S C 1724, 1725, 1726, 1728, 1729, 1730), sec 408, 82 Stat 5, as amended (12 U S C 1730a), Reorg Plan No 3 of 1947, 3 CFR, 1943-1948 Comp , p 1071)

[33 FR 14366, Sept 24, 1968, as amended at 40 FR 46095, Oct 6, 1975, 47 FR 56995, Dec 22, 1982]

§ 569a.2 Appointment of Receiver.

If the Board makes the determinations specified in § 569a.1, the Board will by order appoint the Federal Savings and Loan Insurance Corporation as sole Receiver for such insured institution for the purpose of liquidation, and such appointment may be ex parte and without notice.

§ 569a.3 Notice of appointment.

In the event that the Board appoints a Receiver for an insured institution pursuant to § 569a 2, the Secretary to the Board shall mail a certified copy of the order of appointment by certified mail to the address of the institution as it shall appear on the records of the Board, to any supervisory or regulatory authority to which such institution was theretofore subject, to any previous conservator, receiver, or other legal custodian of any such insured institution, and to any court or other authority to which such previous conservator, receiver, or custodian is subject Notice of such appointment shall be filed forthwith for publication in the FEDERAL REGISTER.

§ 569a.4 Possession by Receiver

The Corporation shall take possession promptly of the insured institution for which it has been appointed Receiver by service of a certified copy of the Board's order of appointment upon the insured institution or upon

the conservator, receiver, or custodian of such institution "Service" as used in the preceding sentence is accomplished by leaving a certified copy of said order at the principal office of the insured institution or by handing a certified copy of said order to the conservator, receiver, or custodian of such insured institution or to the officer or employee of the insured institution or of the conservator, receiver, or custodian who shall be in the principal office of the institution and appears to be in charge of such office The Receiver shall thereafter promptly notify in writing by certified mail the court or other public authority having jurisdiction over such conservator, receiver, or custodian and any supervisory or regulatory authority to which the insured institution was theretofore subject of its possession of the insured institution Immediately upon taking possession of any insured institution, the Corporation as Receiver shall forthwith take possession of and title to books, records, and assets of every description of such institution and of all offices of such institution. The Corporation as Receiver, by operation of law and without any conveyance or other instrument, act or deed, shall succeed to (a) all the rights, titles, powers, and privileges of the insured institution, its members, holders of checking or savings accounts and nonwithdrawable accounts, its officers and directors or any of them, and (b) the titles to the books, records, and assets of every description of any conservator, receiver, or other legal custodian of such institution appointed under State law Such members, holders of checking or savings accounts and nonwithdrawable accounts, officers or directors, or any of them, or any such conservator, receiver, or other legal custodian shall not thereafter have or exercise any such rights, powers, or privileges or act in connection with any asset or property of any nature of the institution in receivership.

[40 FR 46095, Oct 6, 1975 as amended at 40 FR 52717, Nov 12, 1975]

§ 569a 5 Procedure on taking possession

Upon taking possession as provided in the first sentence of § 569a 4, the Receiver shall forthwith

(a) Post a notice in substantially the following form on the door of the principal and other offices of such insured institution.

The ———— (Name of institution) is in the hands of the Federal Savings and Loan Insurance Corporation as Receiver under appointment by the Federal Home Loan Bank Board pursuant to law

FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION AS RECEIVER

(Date) ————————————

(b) File with the Secretary to the Board a statement that it has taken possession of such institution and of the time of such taking of possession, and such statement shall be conclusive evidence of such taking of possession and of the time of such taking of possession, and

(c) Notify, by certified mail or telegraph, all banks, trust companies, and all other individuals, partnerships, corporations and associations, known to the Receiver to be holding or in possession of any assets of such insured institution that the Federal Savings and Loan Insurance Corporation as Receiver has succeeded to all the rights, titles, powers, and privileges of such institution, and to the titles of any conservator, receiver, or other legal custodian of such institution appointed under State law.

§ 569a.6 Powers and duties as Receiver.

The Receiver shall promptly have an inventory and an audit made, either by an independent Certified Public Accountant or as otherwise directed by the Board, of the assets of such institution as of the date of such taking possession, showing the value as carried on the books of the institution, and the security therefor, if any, in whatever form the same shall exist, with a brief description of each such asset and such security. Such assets may be listed in such groups or classes as shall afford full information as to their character and book value, and a record shall be included of the credi tor and other liabilities of the institution One copy of such inventory shall be filed promptly with the Secretary to the Board, and one copy shall be re tained in the principal office for liqui

dation of the institution, so long as such office is maintained. Subject to such limitations, as are contained in this part

(a) *General* The Receiver shall collect all obligations and money due such insured institution, and may

(1) To an extent consistent with its appointment, do all things desirable or expedient at its discretion to carry on the business of such institution and to preserve and conserve the assets and property of every nature of such institution,

(2) Exercise all rights and powers of such institution, including without any limitation on the generality of the foregoing, any rights and powers under any mortgage, deed of trust, chose in action, option, collateral note, contract, judgment or decree, share or certificate of share of stock, or instrument of any nature,

(3) Institute, prosecute, maintain, defend, intervene and otherwise participate in any and all actions, suits, or other legal proceedings by and against the Receiver or such institution or in which the Receiver, such institution, or its creditors or members, or any of them, shall have an interest, and in every way to represent such institution, its members and creditors,

(4) Employ on a salary or fee basis such personnel as in the judgment of the Receiver is necessary or desirable to carry out its responsibilities and functions, including appraisers and Certified Public Accountants, and pay the costs out of the assets of the receivership,

(5) Employ or retain any attorney or attorneys designated by, or acceptable to, the General Counsel of the Federal Home Loan Bank Board in connection with litigation or otherwise to give legal advice and assistance, for the receivership generally or in particular instances, and pay compensation and retainers of such attorney or attorneys, together with all expenses, including, but not limited to, the costs and expenses of any litigation, as approved by said General Counsel, out of the assets of such receivership,

(6) Execute, acknowledge, and deliver any and all deeds, contracts, leases, assignments, bills of sale, releases, extensions, satisfactions, and other instruments necessary or proper for any purposes, including, without any limitation on the generality of the foregoing, the effectuation, termination, or modification of any sale, lease or transfer of real, personal or mixed property, or that shall be necessary or proper to liquidate or carry on the business of such institution as authorized in paragraph (a)(1) of this section. Any deed or other instrument executed pursuant to the authority hereby given shall be as valid and effectual for all purposes as if the same had been executed as the act and deed of the institution,

(7) Do such things, and have such rights, powers, privileges, immunities, and duties, whether or not otherwise granted in the rules and regulations of this chapter, as shall be authorized, directed, conferred, or imposed from time to time by the Board.

(b) *Expenditure of funds of the receivership* The Receiver shall have power to.

(1) Pay all costs and expenses of the receivership as determined by it;

(2) Pay off and discharge taxes and liens,

(3) Pay out and expend such sums as it shall deem necessary or advisable for or in connection with the preservation, maintenance, conservation, protection, remodeling, repair, rehabilitation, or improvement of any asset or property of any nature of such institution or the Receiver;

(4) Pay out and expend such sums as it shall deem necessary or advisable for or in connection with the preservation, maintenance, conservation, or protection of, or pay off and discharge any taxes, assessments, liens, claims, or charges of any nature against, any asset or property of any nature on which the institution or the Receiver has a lien by way of mortgage, deed of trust, pledge, or otherwise, or in which the institution or Receiver has an interest of value of any nature,

(5) Settle, compromise, or obtain the release of, for cash or other consideration, claims and demands against such institution or the Receiver.

(c) *Assets, claims and contracts.* The Receiver shall have power to·

(1) Sell for cash or on terms, exchange, or otherwise dispose of, in

whole or in part, any or all of the assets and property of the institution, real, personal and mixed, tangible and intangible, of any nature, including any mortgage, deed of trust, chose in action, bond, note, contract, judgment, or decree, share or certificate of share of stock or debt, owing to such institution or the Receiver

(2) Surrender, abandon, and release any choses in action, or other assets or property of any nature, whether the subject of pending litigation or not, and settle, compromise, modify, or release, for cash or other consideration, claims and demands in favor of the institution or the Receiver

(3) Reject or repudiate any lease or contract which it considers burdensome Prior to the final acceptance of any offer relating to the disposition of assets or property of any kind having an appraised value in excess of $25,000, but a book value of less than $100,000 or where the transaction involves consideration of more than $25,000, the Receiver shall publish a notice of such proposed transaction in a newspaper printed in the English language and of general circulation in the city or country in which the home office of the institution is located, inviting interested persons to submit in writing any comments or additional offer no later than 15 days from the date of publication, or such longer period as the Receiver may deem desirable If no substantive objection from an interested person or additional offer is received, the proposed transaction may be consummated by the Receiver If such a substantive objection or additional offer is received, such objection or offer shall be considered by the Receiver and a determination shall be made by the Receiver as to the course of action most favorable to the receivership A written record of each such determination shall be transmitted to the Board In the discretion of the Receiver any such objection or additional offer may be referred to the Board for decision With respect to property of any kind having a book value in excess of $100,000, the Receiver shall submit a recommendation to the Board for approval of the terms of the proposed listing for sale When an offer is received with respect to such property on terms at least as favorable as those approved by the Board, the Receiver shall publish a notice of such proposed transaction as provided above. If no substantive objection from an interested person or additional offer is received, the proposed transaction may be consummated by the Receiver If such a substantive objective or additional offer is received, such objection or offer shall be referred to the Board for decision

(d) *Investment of funds* The Receiver shall have the power to deposit the monies and funds of the receivership in any bank or banks insured by the Federal Deposit Insurance Corporation, in any insured institution within the State in which the institution in default is located which offers checkings accounts, or in any Federal Home Loan Bank, and may invest such moneys or funds in certificates of deposit in any bank or banks insured by the Federal Deposit Insurance Corporation or in savings accounts other than nonwithdrawable accounts, in an insured institution or institutions The Receiver shall have power to invest any funds not currently needed for transacting the business of the receivership or for payment of liquidating dividends in Government obligations with a maturity of not more than 2 years. The Receiver shall have no power to make loans except loans to facilitate the sale of any real estate owned and except loans which it deems necessary to protect investments or the security for investments

(e) *Borrowing.* With approval of the Board and on terms and conditions approved by the Board, the Receiver may borrow money in any amount and from any source and in any manner, and execute, acknowledge and deliver notes, certificates, and other evidence of indebtedness therefor and secure the repayment thereof by the mortgage, pledge, assignment in trust or hypothecation of any or all of the property, whether real, personal, or mixed, tangible or intangible, of any nature of such institution or the Receiver, and such borrowing may be for any purpose, including, without any limitation on the generality of the foregoing, facilitating liquidation, carrying on the business of such institution, protection or preserving the assets in its possession, declaring and paying dividends to members and creditors, and providing for the expense of administration and liquidation

[33 FR 14366, Sept 24, 1968, as amended at 40 FR 46096, Oct 6, 1975]

§ 569a.7 Priority of claims.

(a) *Claims against the receivership,* except for claims specified in paragraphs (b), (c), and (d) of this section, shall have the following order of priority

(1) All costs, expenses, and debts of the receivership incurred on or after the date of the appointment of the Receiver,

(2) All claims of creditors, including contractual claims for interest to the date of payment, to the extent that under the laws of the State in which the principal office of the institution in receivership is located such creditor claims are secured by, or constitute a lien on, assets or property of any kind of the institution in receivership,

(3) All claims of general creditors, and the unsecured portion of any creditor obligation under paragraph (a)(2) of this section, valid as such under the laws of the State in which the principal office of the institution in receivership is located, including contractual claims for interest to the date of default,

(4) All claims of holders of checking and savings accounts, and/or the Federal Savings and Loan Insurance Corporation to the extent it has paid insurance to holders of such accounts, which under the laws of the State in which the principal office of the institution in receivership is located are given a priority for liquidation purposes over other classes of such accounts; except that whenever under the laws of the State in which the principal office of the institution in receivership is located such claims are treated on a parity with general creditor obligations upon the liquidation of the institution, such claims will be treated as general creditor obligations under paragraph (a)(3) of this section,

(5) All claims of holders of other accounts, and/or the Federal Savings and Loan Insurance Corporation to the extent it has paid insurance to the holders of such other accounts, and

(6) Interest from the date of default on the outstanding principal amount of all claims that qualify under paragraphs (a) (3), (4), and (5) of this section, such interest to be adjusted monthly to reflect the average rate for U.S. Treasury bills with maturities of 91 days during the preceding three months, and if the surplus is not sufficient to pay such post-default interest in full on all claims specified in this paragraph, the payment of interest shall be made pro rata on all such claims without regard to any priorities as to the payment of principal on said claims.

(b) Creditor claims which have been subordinated in whole or in part to general creditor claims and/or claims of checking or savings accountholders shall be given the priority specified in the instruments establishing such claims Where the instruments specify that such claims are subordinated to general creditor obligations and the claims of such accountholders upon liquidation of the institution, but are silent with respect to subordination to the post-default interest rights of the general creditors and such accountholders, the payment of interest as set forth in paragraph (a)(6) of this section shall have priority over the principal amount of such subordinated creditor claims and any contractual interest thereon.

(c) In the case of institutions having nonwithdrawable accounts or mutual capital certificates outstanding, the claims specified in paragraphs (a) and (b) of this section shall have priority, in the order stated above, over any claims by the holders of mutual capital certificates or nonwithdrawable accounts. If a surplus remains after making distribution in full to prior claimants as set forth in paragraphs (a) and (b) of this section, such surplus shall be distributed to the mutual capital certificate holders and nonwithdrawable account holders, in accordance with the terms, conditions and priorities specified in the instruments establishing their interests in the institution If such instruments do not specify the terms, conditions, and

priorities for liquidation, the distribution of the surplus shall be pro rata.

(d) In the case of a mutual institution, if a surplus remains after making distribution in full as set forth in paragraphs (a) and (b) of this section, such surplus shall be distributed to the checking and savings accountholders as of the date of default, in accordance with the terms, conditions and priorities specified in the instruments establishing their interests in the institution If such instruments do not specify the terms, conditions and priorities for liquidation, the distribution of the surplus shall be pro rata

(e) All claims of any class described in paragraphs (a) through (d) of this section shall be paid in full, or provision made for such payment, before any claims of lesser priority are paid. If there are insufficient funds to pay any class of claims in full, distribution on such class shall be pro rata No distribution shall be made under paragraphs (a)(3), (4), (5), and (6), (b), (c), and (d) of this section except upon prior approval of the Board

(Sec 5, 48 Stat 134, as amended, 12 U S C. § 1464, secs 402, 403, 406, 48 Stat 1256, 1257, 1259, as amended, 12 U S C 1725, 1726, 1729, Reorg Plan No 3 of 1947, 12 FR 4981, 3 CFR, 1943-48 Comp , p 1071)

[33 FR 14366, Sept 24, 1968, as amended at 40 FR 46096, Oct 6, 1975, 45 FR 82160, Dec 15, 1980, 46 FR 54922, Nov. 5, 1981]

§ 569a 8 Creditor claims

(a) The Receiver shall promptly publish, in a newspaper printed in the English language and of general circulation in the city or county in which the principal office of such institution is located, a notice to all creditors of such institution to present their claims with proof thereof to such Receiver on forms prescribed by the Receiver on or before a date specified in such notice The date specified in such notice shall be at least 90 days after the date of the first publication of such notice (Sundays and holidays included) Such notice shall be similarly published on dates approximately 1 month and 2 months after the date of such first publication The Receiver shall mail a similar notice to any creditor, shown to be such on the books of the institution, at the last address of such creditor as the same shall appear on such books.

(b) Any claim filed on or before the date fixed pursuant to paragraph (a) of this section and proved to the satisfaction of the Receiver shall be allowed by the Receiver. The Receiver may disallow in whole or in part or reject in whole or in part any creditor claim or claims of security, or priority not proved to its satisfaction, and notice of such disallowance or rejection together with the reason therefor shall be served by the Receiver upon the claimant by certified mail. The mailing of notice of such disallowance or rejection to the last known address of any claimant appearing on the books or the proof of claim shall be deemed sufficient for the purposes hereof.

(c) Upon the expiration of the time fixed for the presentation of creditor claims by the notice provided for in paragraph (a) of this section, the Receiver shall file with the Board a list of allowed claims indicating the character of each claim

(d) The Receiver shall file with the Board from time to time a list of creditor claims filed after the date fixed pursuant to paragraph (a) of this section and a list of creditor claims disallowed by the Receiver pursuant to paragraph (b) of this section. Any such claim may be allowed by the Board in its discretion upon good cause shown.

§ 569a.9 Claims of accountholders.

The Receiver shall prepare a list of accounts of checking and savings accountholders for use by the Corporation in settlement of claims for insurance under Part 564 of this subchapter Upon such settlement, the Receiver shall furnish to each such accountholder a certificate as to the amount of such account which is not covered by insurance under said Part 564 and stating that the accountholder holds a claim against the receivership which is to be discharged to the extent permitted under this part No such certificate shall be furnished by the Receiver unless the accountholder has first surrendered to the Receiver such evidence of the ownership of the account as he may have or, in case of loss of such evidence, the accountholder has agreed that the Receiver shall be entitled to the surrender of such evidence if it is thereafter recovered, but this requirement shall not be applicable in cases in which such evidence has been surrendered theretofore to the Corporation in connection with payment of insurance of the account. In a case where a Receiver has reason to believe that the records of the institution in receivership may not disclose a complete record of all accounts of such accountholders, or in a case where all such accountholders have not presented claims within 1 year from the date of appointment of the Receiver, the Receiver shall publish, in a newspaper printed in the English language and of general circulation in the city or county in which the principal office of such institution was located, a notice to all such accountholders to present their claims of ownership thereof on forms prescribed by the Receiver to such Receiver on or before a date specified in such notice, which date shall be 3 years after the date of default. Such notice shall be similarly published on dates approximately 1 month and 2 months after the date of such first publication. Such notice shall be similarly published on a date approximately 1 month prior to the date specified in such notice for presentation of claims of ownership. Claims of ownership not filed within the period stated in the notices shall be disallowed Any part or all of a claim by such an accountholder which is filed within the period stated in the notices and which is disallowed by the Receiver may be allowed by the Board in its discretion upon good cause shown

[40 FR 46096, Oct 6, 1975]

§ 569a.10 Audits.

Each institution for which a Receiver has been appointed shall be audited at least annually by an independent Certified Public Accountant or as otherwise directed by the Board, and one copy of such audit filed with the Secretary to the Board and one copy retained in the principal office for liquidation of the institution so long as such office is maintained

§ 569a 11 Accounting practices; reports.

The Receiver may, from time to time, prescribe the accounting practices to be followed. The Receiver shall make an annual report of its affairs as of December 31 of each year to the Board, on forms prescribed by the Board or the Receiver, and such other reports as may be from time to time required by the Board and shall accompany each recommendation for the declaration and payment of a liquidating dividend with a report showing the available assets. One copy of the reports required in this section shall be filed with the Secretary to the Board, one copy shall be retained by the Corporation, and one copy shall be retained in the principal office for the liquidation of the institution, so long as such is maintained.

§ 569a.12 Final discharge and release of Receiver.

(a) *Final report.* At such time as the Receiver shall recommend a final distribution of the assets or at such time as the Receiver shall be otherwise relieved of its duties, the Receiver shall file with the Board a detailed report in form satisfactory to the Board.

(b) *Final discharge.* Upon the final liquidation of the receivership, or the completion of the duties of the Receiver or at such time as the Receiver shall be otherwise relieved of its duties, the Receiver shall have an audit made of the institution in receivership, either by an independent Certified Public Accountant or as otherwise directed by the Board, and such audit shall be filed with the Secretary to the Board The accounts of the Receiver shall thereupon be approved or disapproved by the Board and if approved, the Receiver shall thereupon be given a complete and final discharge and release

§ 569a.13 Purchase and assumption transactions.

The requirements set forth in §§ 569a.5(a), 569a.6(c)(3), 569a 8, 569a 9 and 569a 10 shall not apply to the Corporation as receiver for an institution that becomes the subject of a purchase and assumption transaction

[45 FR 76653, Nov 20, 1980]

CHAPTER VII—NATIONAL CREDIT UNION ADMINISTRATION

EDITORIAL NOTE. For nomenclature changes to Chapter VII, see 36 FR 18637, Sept 18, 1971, and 44 FR 33676, June 12, 1979.

SUBCHAPTER A—REGULATIONS AFFECTING CREDIT UNIONS

SUBCHAPTER A—REGULATIONS AFFECTING CREDIT UNIONS

PART 700—DEFINITIONS

§ 700.1 Definitions.

As used in this chapter

(a) "Act" means the Federal Credit Union Act (73 Stat 628, 84 Stat. 944, 12 U.S.C. 1751-1790).

(b) "Administration" means the National Credit Union Administration.

(c) "Board" means the Board of the National Credit Union Administration.

(d) "Credit Union" means a credit union chartered under the Federal Credit Union Act or, as the context permits, under the laws of any State.

(e) "Regional Director" means the representative of the Administration in the designated geographical area in which the office of the Federal credit union is located.

(f) "Regional Office" means the office of the Administration located in the designated geographical areas in which the office of the Federal credit union is located.

(g) "State" means a State of the United States, the District of Columbia, any of the several Territories and possessions of the United States, the Panama Canal Zone, and the Commonwealth of Puerto Rico.

(h) Pursuant to section 101(5) of the Federal Credit Union Act, the term "low income members" shall include (1) those members whose annual income falls at or below the lower standard of living classification as established by the Bureau of Labor Statistics, U.S Department of Labor, (2) those members who are residents of a public housing project who qualify for such residency because of low income, (3) those members who qualify as recipients in a community action program, and (4) those members who are enrolled as full-time or part-time students in a college, university, high school, or vocational school.

(i) As used in section 101(5) of the Federal Credit Union Act, the term "predominantly" is defined as a simple majority

(j) For the purpose of establishing the reserves required by section 116 of the Federal Credit Union Act, all assets except the following shall be considered risk assets.

(1) Cash on hand

(2) Deposits and/or shares in Federally or State insured banks, savings and loan associations, and credit unions

(3) Assets which are insured by, fully guaranteed as to principal and interest by, or due from the U.S. Government, its agencies, the Federal National Mortgage Association, or the Government National Mortgage Association.

(4) Loans to other credit unions.

(5) Loans to students insured under the provisions of title IV, part B of the Higher Education Act of 1965 (20 U.S C. 1071 et seq.) or similar State insurance programs.

(6) Loans that are fully or partially insured or guaranteed by the Federal or a State government or any agency of either.

(7) Shares or deposits in central credit unions. A central credit union is defined as a credit union whose membership primarily consists of:

(i) Other credit unions organized under State or Federal law,

(ii) Officials, committee members, and employees of any credit union organized under State or Federal law, or

(iii) Any combination of the categories described in paragraphs (j)(7)(i) and (ii) of this section.

(8) Common trust investments which deal in investments authorized by the Federal Credit Union Act.

(9) Prepaid expenses.

(10) Accrued interest on nonrisk investments

(11) Furniture and equipment

(12) Land and buildings.

(13) Loans fully secured by a pledge of shares in the lending Federal credit union, equal to and maintained to at least the amount of the loan outstanding.

(14) Loans which are purchased from liquidating credit unions and guaranteed by the National Credit Union Administration

(15) National Credit Union Share Insurance Fund Guaranty Accounts established with the authorization of the National Credit Union Administra-

§ 741.5 Insurance premium and one percent deposit

(a) *Scope.* This section implements the requirements of section 202 of the Federal Credit Union Act (12 U S C 1782) providing for capitalization of the National Credit Union Share Insurance Fund through the maintenance of a deposit by each insured credit union in an amount equalling one percent of its insured shares and payment of an annual insurance premium.

(b) *Definitions* For purposes of this section

(1) "Insurance year" means a calendar year period, from January 1 through December 31,

(2) "Insured shares" means the total amount of a credit union's share, share draft and share certificate accounts authorized to be issued to members, other credit unions or public units, exclusive of amounts in excess of insurance coverage limits as provided in 12 CFR Part 745, and, in the case of a federally insured state chartered credit union, shall include deposit accounts of members, other credit unions and public units if authorized by state law,

(3) "Fund" means the National Credit Union Share Insurance Fund, and

(4) "Normal operating level" means a total value of Fund equity equalling 1 3 percent of the aggregate of all insured shares in insured credit unions.

(c) *One percent deposit* Each insured credit union shall maintain with the Fund during each insurance year a deposit in an amount equalling one percent of the total of the credit union's insured shares as of the close of the preceding insurance year The deposit amount shall be adjusted annually on or before January 31, or as otherwise directed by the Board

(d) *Premium* Each insured credit union shall pay to the Fund, on or before January 31 of each insurance year or as otherwise directed by the Board, an insurance premium for that insurance year in an amount equalling one-twelfth of one percent of the credit union's total insured shares as of the close of the preceding insurance year

(e) *Redistribution of Fund equity* When the Fund exceeds its normal operating level, the Board will, at least annually, make a proportionate adjustment for insured credit unions of the amount necessary to reduce the Fund to its normal operating level Such adjustment will be in the form determined by the Board and may include a waiver of insurance premiums, premium rebates and/or distributions from Fund equity.

(f) *Form 1308.* A certified copy of NCUA Form 1308 will be completed by each insured credit union in connection with its computation and funding of its annual premium payment and any change in its one percent deposit The Form 1308 provides for any adjustments declared by the Board, resulting in a single net transfer of funds between the credit union and NCUA. Copies of Form 1308 may be obtained from any NCUA office

(g) *New charters.* A newly chartered credit union that obtains share insurance coverage from the Fund during the insurance year in which it has obtained its charter shall not be required to pay an insurance premium for that insurance year. The credit union shall fund its one percent deposit on or before January 31 of the following insurance year, but shall not participate in any distribution from Fund equity related to the period prior to the credit union's funding of its deposit.

(h) *Conversion to Federal insurance.* An existing credit union that converts to insurance coverage with the Fund during an insurance year shall immediately fund its one percent deposit based on the total of its insured shares as of the close of the month prior to conversion and shall pay a premium (unless waived in whole or in part for all insured credit unions during that year) in an amount that is prorated to reflect the remaining number of months in the insurance year. The credit union will be entitled to a prorated share of any distribution from Fund equity declared subsequent to the credit union's conversion.

(i) *Return of deposit* Any insolvent credit union that is closed for involuntary liquidation will not be entitled to a return of its deposit Any other credit union whose insurance coverage

with the Fund terminates will be entitled to a return of the full amount of its deposit immediately after the final date on which any shares of the credit union are insured, except that the Board reserves the right to delay payment by up to one year if it determines that immediate payment would jeopardize the financial condition of the Fund. A credit union that receives a return of its deposit during an insurance year shall have the option of leaving a nominal sum on deposit with the Fund until the next distribution from Fund equity and will thus qualify for a prorated share of the distribution

((12 U S C 202(c)), Pub L 98-369, sec 2803, July 18, 1984)

[49 FR 40564, Oct 17, 1984]

EFFECTIVE DATE NOTE At 49 FR 40564, Oct 17, 1984, § 741 5 was revised At 49 FR 42918, Oct 25, 1984, NCUA published a correction regarding the effective date of the information collection requirements in paragraph (f), stating that these requirements wouldn't take effect until the Office of Management and Budget had cleared them See the FEDERAL REGISTER for further notice of the effective date of those provisions

§ 741.6 Notice of voluntary termination of insured status.

In the event of the termination of a credit union's status as an insured credit union as provided under subsection 206 (a) of the Act, the credit union shall give prompt notice to all of its members whose accounts are insured that it has ceased to be an insured credit union. The notice, which shall be mailed to each mamber's last address of record on the books of the credit union, shall be as follows:

NOTICE

(Date) ———

1 The status of the ———— as an insured credit union under the provisions of the Federal Credit Union Act, will terminate as of the close of business on the —— day of ———, ——.

2 Any deposits made by you after that date, either new deposits or additions to existing accounts, will not be insured by the National Credit Union Administration

3 Accounts in the credit union on the —— day of ——, ——, up to a maximum of $40,000 for each member, will continue to be insured, as provided by the Federal Credit Union Act, for one (1) year after the close of business on the — day of ——, ——, Provided, however, that any withdrawals after the close of business on the —— day of ——, ——, will reduce the insurance coverage by the amount of such withdrawals

(Name of Credit Union) ————————

(Address) ————————

(Sec 120, 73 Stat 635 (12 U S C 1766), sec 206, 92 Stat 3652, 3656, 3659, 3663, 3670, 3671, and 3681 (12 U S C 1786); sec. 209, 84 Stat. 1104 (12 U S C 1789) and sec 304, 92 Stat 3720 (12 U S C 1795(c)))

[44 FR 41762, July 18, 1979, as amended at 47 FR 1371, Jan 13, 1982]

§ 741.7 Financial and statistical and other reports.

(a) Each operating insured credit union shall file with the National Credit Union Administration on or before January 31 and on or before July 31 of each year a semiannual Financial and Statistical Report on Form NCUA 5300, as of the previous December 31 (in the case of the January filing) or June 30 (in the case of the July filing).

(b) Insured credit unions shall, upon written notice from the Board or Regional Director, file such financial or other reports in accordance with instructions contained in such notice.

((12 U S C 202(c)), Pub L 98-369, sec 2803, July 18, 1984)

[49 FR 40564, Oct. 17, 1984]

EFFECTIVE DATE NOTE At 49 FR 40564, Oct 17, 1984, § 741 7 was revised At 49 FR 42918, Oct 25, 1984, NCUA published a correction regarding the effective date of the information collection requirements in paragraph (a), stating that these requirements wouldn't take effect until the Office of Management and Budget had cleared them. See the FEDERAL REGISTER for further notice of the effective date of those provisions

PART 745—CLARIFICATION AND DEFINITION OF ACCOUNT INSURANCE COVERAGE

Sec

Sec

AUTHORITY Sec 1, 84 Stat 1010-1011 (12 U S C 1781-1790), sec 308(c), Pub L 96-221, 94 Stat 148, Mar 31, 1980, sec 120, 73 Stat 635 (12 U S C 1766) and sec 209, 84 Stat 1014 (12 U S C 1789), unless otherwise noted

EDITORIAL NOTE See 45 FR 35803, May 28, 1980, for a nomenclature change document affecting this part

§ 745.1 Definitions.

(a) Depositors means those persons who are members or nonmembers of credit unions which are allowed by law or regulation to deposit money in such credit unions.

(b) Deposits include the purchase of shares, share certificates or share deposit accounts by a member or nonmember of a credit union of a type approved by the Board which evidences money or its equivalent received or held by a credit union in the usual course of business for which it has given or is obligated to give credit to the account of the member or nonmember

[36 FR 2477, Feb 5, 1971]

§ 745 2 General principles applicable in determining insurance of deposits.

(a) *General* This Part 745 provides for determination by the Board of the insured depositors of an insured credit union and the amount of their insured accounts The rules for determining the insurance coverage of accounts maintained by depositors in the same or different rights and capacities in the same insured credit union are set forth in the following provisions of this part Insofar as rules or local law enter into such determinations, the law of the jurisdiction in which the insured credit union's principal office is located shall govern

(b) The regulations in this part in no way are to be interpreted to authorize any type of account that is not authorized by the Federal Law or Regulation or State Law or Regulation or by the bylaws of a particular credit union The purpose is to be as inclusive as possible of all possible situations.

(c) *Records.* (1) The account records of the insured credit union shall be conclusive as to the existence of any relationship pursuant to which the funds in the account are deposited and on which a claim for insurance coverage is founded. Examples would be trustee, agent, custodian, or executor No claim for insurance based on such a relationship will be recognized in the absence of such disclosure.

(2) If the account records of an insured credit union disclose the existence of a relationship which may provide a basis for additional insurance, the details of the relationship and the interests of other parties in the account must be ascertainable either from the records of the credit union or the records of the depositor maintained in good faith and in the regular course of business.

(3) The deposit records of an insured credit union in connection with a trust account shall disclose the name of both the settlor (grantor) and the trustee of the trust and shall contain an account signature card executed by the trustee

(4) The interests of the coowners of a joint deposit shall be deemed equal, unless otherwise stated on the insured credit union's records in the case of a tenancy in common

(d) *Valuation of trust interests.* (1) Trust interests in the same trust deposited in the same account will be separately insured if the value of the trust interest is capable of determination, without evaluation of contingencies, except for those covered by the present worth tables and rules of calculation for their use set forth in § 20 2031-10 of the Federal Estate Tax Regulations (26 CFR 20 2031-10).

(2) In connection with any trust in which certain trust interests are not capable of evaluation in accordance with the foregoing rule, payment by

the Board to the trustee with respect to all such trust interests shall not exceed the basic insured amount of $100,000.

(3) Each trust interest in any trust established by two or more settlors shall be deemed to be derived from each settlor pro rata to his contribution to the trust.

(4) The term "trust interest" means the interest of a beneficiary in an irrevocable express trust, whether created by trust instrument or statute, but does not include any interest retained by the settlor.

[36 FR 2477, Feb 5, 1971, as amended at 40 FR 3287, Jan 21, 1975; 40 FR 25582, June 17, 1975]

§ 745.3 Single ownership accounts.

Funds owned by an individual and deposited in the manner set forth below shall be added together and insured up to $100,000 in the aggregate

(a) *Individual accounts.* Funds owned by an individual (or by the community between husband and wife of which the individual is a member) and deposited in one or more deposit accounts in his own name shall be insured up to $100,000 in the aggregate.

(b) *Accounts held by agents or nominees.* Funds owned by a principal and deposited in one or more deposits in the name or names of agents or nominees, shall be added to any individual deposit of the principal and insured up to $100,000 in the aggregate

(c) *Accounts held by guardians, custodians, or conservators.* Funds held by a guardian, custodian, or conservator for the benefit of his ward or for the benefit of a minor under a Uniform Gifts to Minors Act and deposited in one or more deposits in the name of the guardian, custodian, or conservator shall be added to any individual deposit accounts of the ward or minor and insured up to $100,000 in the aggregate.

(d) *Custodial Accounts.* Loan payments received by a Federal credit union prior to remittance to other parties to whom the loan was sold pursuant to section 107(13) of the Federal Credit Union Act and § 701 21-8 of NCUA's regulations shall be considered to be funds owned by the borrower and shall be added to any individual accounts of the borrower and insured up to $100,000 in the aggregate.

[36 FR 2477, Feb 5, 1971, as amended at 40 FR 3287, Jan 21, 1975, 47 FR 54429, Dec 3, 1982]

§ 745.4 Testamentary accounts.

(a) Funds owned by an individual and deposited in a revocable trust account, tentative or "Totten" trust account, "payable-on-death" account or similar account evidencing an intention that on his death, the funds shall belong to his spouse, child, or grandchild shall be insured up to $100,000 in the aggregate as to each such named beneficiary, separately from any other accounts of the owner

(b) If the named beneficiary of such an account is other than the owner's spouse, child, or grandchild, the funds in such account shall be added to any individual accounts of such owner and insured up to $100,000 in the aggregate.

[36 FR 2477, Feb 5, 1971, as amended at 40 FR 3287, Jan 21, 1975]

§ 745.5 Accounts held by executors or administrators.

Funds of a decedent held in the name of the decedent or in the name of the executor or administrator of his estate and deposited in one or more accounts shall be insured up to $100,000 in the aggregate, separately from the individual deposits of the beneficiaries of the estate or of the executor or administrator.

[36 FR 2477, Feb 5, 1971, as amended at 40 FR 3287, Jan 21, 1975]

§ 745.6 Accounts held by a corporation or partnership.

Deposits of a corporation or partnership engaged in any independent activity shall be insured up to $100,000 in the aggregate. A deposit of a corporation or partnership not engaged in an independent activity shall be deemed to be owned by the person or persons owning such corporation or comprising such partnership and, for deposit insurance purposes, the interest of each person in such a deposit shall be added to any other deposit individually

owned by such persons and insured up to $100,000 in the aggregate

[36 FR 2477, Feb 5, 1971, as amended at 40 FR 3287, Jan 21, 1975]

§ 745 7 Accounts held by an unincorporated association.

Deposits of an unincorporated association engaged in any independent activity shall be insured up to $100,000 in the aggregate A deposit of an unincorporated association not engaged in an independent activity shall be deemed to be owned by the persons comprising such association and, for deposit insurance purposes, the interest of each owner in such a deposit account shall be added to any other deposit account individually owned by such person and insured up to $100,000 in the aggregate.

[36 FR 2477, Feb 5, 1971, as amended at 40 FR 3287, Jan 21, 1975]

§ 745.8 Joint accounts

(a) *Separate insurance coverage.* Accounts owned jointly, whether as joint tenants with right of survivorship, as tenants by the entireties, as tenants in common, or by husband and wife as community property, shall be insured separately from deposit accounts individually owned by the coowners

(b) *Qualifying joint accounts* A joint account shall be deemed to exist, for purposes of insurance of accounts, only if each coowner has personally executed a joint account signature card and possesses withdrawal rights The restrictions of this paragraph shall not apply to coowners of a time certificate of deposit or to any deposit obligation evidenced by a negotiable instrument, but such a deposit must in fact be jointly owned

(c) *Failure to qualify* An account owned jointly which does not qualify as a joint account for purposes of insurance of accounts shall be treated as owned by the named persons as individuals and the actual ownership interest of each such person in such account shall be added to any other accounts individually owned by such person and insured up to $100,000 in the aggregate

(d) *Same combination of individuals* All joint accounts owned by the same combination of individuals shall first be added together and insured up to $100,000 in the aggregate

(e) *Interest of each coowner* The interests of each coowner in all joint accounts owned by different combinations of individuals shall then be added together and insured up to $100,000 in the aggregated.

[36 FR 2477, Feb 5, 1971, as amended at 40 FR 3287, Jan 21, 1975]

§ 745.9-1 Trust accounts.

All trust interests, for the same beneficiary, deposited and established pursuant to valid trust agreements created by the same settlor (grantor) shall be added together and insured up to $100,000 in the aggregate, separately from other deposit or share accounts of the trustee of such trust funds or the settlor or beneficiary of such trust arrangements.

[36 FR 2477, Feb 15, 1971, as amended at 40 FR 3287, Jan 21, 1975 Redesignated at 40 FR 25582, June 17, 1975]

§ 745.9-2 Keogh accounts and individual retirement accounts

(a) The present vested ascertainable interest of a participant or designated beneficiary in a trust or custodial account maintained pursuant to a pension or profit-sharing plan described under section 401(d) or section 408(a) of the Internal Revenue Code shall be insured up to $100,000 separately from other deposits of the participant or designated beneficiary.

(b) Upon liquidation of the credit union, any insurance coverage payment shall be made by the Board to the trustee or custodian, or the successor trustee or custodian, unless otherwise directed in writing, by the plan participant or beneficiary.

(Sec 120, 73 Stat 635 (12 U S C 1766) and sec 209, 84 Stat 1014 (12 U S C 1979))

[43 FR 57141, Dec 6, 1978]

§ 745.9-3 Deferred compensation accounts

Funds deposited by an employer pursuant to a deferred compensation plan shall be insured up to $100,000 as to the interest of each plan participant who is a member, separately

from other accounts of the participant or employer.

(Sec. 207(c)(1), 84 Stat 1010 (12 U S C 1787(c)(1)), sec 120, 73 Stat 635 (12 U S C 1766) and sec 209, 84 Stat 1104 (12 U S C 1789))

[47 FR 30465, July 14, 1982]

§ 745.10 Public unit accounts.

(a) Public funds invested in Federal credit unions and federally-insured State credit unions authorized to accept such investments shall be insured as follows:

(1) Each official custodian of funds of the United States lawfully investing the same in a federally-insured credit union shall be separately insured up to $100,000;

(2) Each official custodian of funds of any State of the United States or any county, municipality, or political subdivision thereof lawfully investing the same in a federally-insured credit union in the same State shall be separately insured up to $100,000;

(3) Each official custodian of funds of the District of Columbia lawfully investing the same in a federally-insured credit union in the District of Columbia shall be separately insured up to $100,000,

(4) Each official custodian of funds of the Commonwealth of Puerto Rico, the Panama Canal Zone, or any territory or possession of the United States, or any county, municipality, or political subdivision thereof lawfully investing the same in a federally-insured credit union in Puerto Rico, the Panama Canal Zone, or any such territory or possession, respectively, shall be separately insured up to $100,000;

(5) Each official custodian referred to in paragraphs (a)(2), (3), and (4) of this section lawfully investing such funds in a federally-insured credit union outside their respective jurisdictions shall be separately insured up to $100,000, and

(6) For purposes of this section, if the same person is an official custodian of more than one public unit, he shall be separately insured with respect to the public funds held by him for each such unit, but he shall not be separately insured with respect to all public funds of the same public unit by virtue of holding different offices in such unit or by holding such funds for different purposes.

[40 FR 23456, May 30, 1975, as amended at 47 FR 17980, Apr. 27, 1982]

§ 745 11 Deposits evidenced by negotiable instruments.

If any insured deposit obligation of a credit union be evidenced by a negotiable certificate of deposit, negotiable draft, negotiable cashier's or officer's check, negotiable certified check, or negotiable traverler's check or letter of credit, the owner of such deposit obligation will be recognized for all purposes of claim for insured deposits to the same extent as if his name and interest were disclosed on the records of the credit union provided the instrument was in fact negotiated to such owner prior to the date of the closing of the credit union. Affirmative proof of such negotiation must be offered in all cases to substantiate the claim.

[36 FR 2477, Feb 5, 1971 Redesignated at 40 FR 23456, May 30, 1975]

§ 745.12 Deposit obligations for payment of items forwarded for collection by credit union acting as agent.

Where a closed credit union has become obligated for the payment of items forwarded for collection by a credit union acting solely as agent, the owner of such items will be recognized for all purposes of claim for insured accounts to the same extent as if his name and interest were disclosed on the records of the credit union when such claim for insured accounts, if otherwise payable, has been established by the execution and delivery of prescribed forms. Such credit union forwarding such items for the owners thereof will be recognized as agent for such owners for the purpose of making an assignment of the rights of such owners against the closed insured credit union to the Board and for the purpose of receiving payment on behalf of such owners.

[36 FR 2477, Feb 5, 1971 Redesignated at 40 FR 23456, May 30, 1975]

§ 745.13 Notification of depositors/shareholders

Each insured credit union is required to provide notice of these rules and regulations for Clarification and Definition of Insurance Coverage of Member Accounts, Part 745, not later than 180 days after the effective date of these regulations or 90 days after being insured, whichever is later, to the owners of each account which had a balance in excess of $5,000 on any date selected by the credit union between October 1, 1970, and June 30, 1971. Credit unions insured after the effective date of this regulation may select the end of any month of the preceding 6 months before being insured to determine balances in excess of $5,000 Such notice shall consist of mailing to such owners at their last known address as shown on the records of the insured credit union, a question and answer brochure on insurance of deposits A small initial supply of such brochures will be prepared and furnished without cost by the Board Additional copies may be purchased from the usual source of supply Such information shall also be made available to the public at each teller's station or window where deposits or shares are normally received and at new account or share stations of an insured credit union. Additional explanatory materials may also be sent to depositors at the option of the insured credit union For purposes of this section the terms "teller station" and "window" do not include automated teller machines or point of sale terminals

[36 FR 2479, Feb 5, 1971, as amended at 36 FR 12688, July 3, 1971 Redesignated at 40 FR 23456, May 30, 1975, and amended at 44 FR 49441, Aug 23, 1979]

PART 747—ADMINISTRATIVE ACTIONS, ADJUDICATIVE HEARINGS, AND RULES OF PRACTICE AND PROCEDURE

Sec

AUTHORITY Sec 120, 73 Stat 635 (12 U S C 1766), sec 206, 92 Stat. 3652, 3656, 3659, 3663, 3670, 3671, and 3681 (12 U S C 1786), sec 209, 84 Stat 1104 (12 U S C 1789) and sec 304, 92 Stat 3720 (12 U S C 1795(c)).

SOURCE 44 FR 41762, July 18, 1979, unless otherwise noted

§ 747.01 Scope.

(a) This part describes the various administrative adjudicative actions available to the National Credit Union Administration Board, the grounds for those actions and the procedures used in hearings related to each available action. The administrative actions described herein, as well as the grounds and hearing procedures for each, are controlled by sections 120(b) (except where the Federal credit union is closed due to insolvency), 206 and 304(c)(3) of the Federal Credit Union Act. Should any provision of this part be inconsistent with these, or any other provisions of said Act, as amended, the Act shall control. Judicial enforcement of any action or order described in this part, as well as judicial review thereof shall be as prescribed under the Federal Credit Union Act (12 U.S.C 1751 *et seq.*) (hereinafter